

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT GRUNDSTEIN,
Plaintiff,
vs.
WASHINGTON STATE BAR
ASSOCIATION, *et al.*,
Defendants

Case No. C12-569RSL

ORDER GRANTING IN PART
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on the WSBA Defendants' "Motion for Dismissal with Prejudice and Imposition of Bar Order Pursuant to 28 U.S.C. § 1651" (Dkt. # 53).¹ The Court GRANTS the motion IN PART. It DISMISSES Plaintiff's remaining claims WITH PREJUDICE but DENIES the request for a pre-filing order.

I. BACKGROUND

The Court detailed the history of this case in its prior Order dismissing with prejudice Plaintiff's claims for injunctive and declaratory relief. Dkt. # 73. It

¹ The WSBA Defendants include the Washington State Bar Association, “Bar Counsel” Linda Eide, “Hearing Officer” Lissa Hammel, Douglas J. Ende, and Williams & Williams P.C. Plaintiff has asserted claims against each of the individuals in his or her personal capacity.

1 incorporates that history herein by reference. The Court notes that only Plaintiff's
 2 monetary claims against each WSBA Defendant remain at issue in this matter. Id. at 8.

3 **II. DISCUSSION**

4 **A. Motion to Dismiss**

5 Defendants ask the Court to dismiss Plaintiff's remaining claims on two grounds.²
 6 First, they argue that he has failed to allege sufficient facts to state a plausible claim for
 7 relief. Dkt. # 53 at 13–14. Second, they assert that, as quasi-judicial officers and
 8 entities, they are immune from his suit. Id. at 15–20. In his response, Plaintiff argues
 9 that he "has alleged many conventionally recognized causes of action." Dkt. # 67 at 10.
 10 And he asserts that none of the Defendants can claim immunity, arguing that Ms. Eide is
 11 liable as a complaining witness, id. at 11–12, that Ms. Hammel is liable for acting
 12 without jurisdiction, id. at 12–13, and that, because each is liable, so are the WSBA and
 13 Williams & Williams P.C.³

14 The Court considers the merit of Defendants' motion on a Defendant-by-
 15 Defendant basis.

16 **1. Mr. Douglass J. Ende**

17 The Court starts its inquiry with Defendant Ende. "To survive a motion to
 18 dismiss, a complaint must contain sufficient factual matter, accepted as true,⁴ to 'state a
 19 claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)

21 ² The Court notes that Defendants filed their motion prior to this Court's dismissal of
 22 Plaintiff's requests for declaratory and injunctive relief. See Dkt. # 73. The Court disregards
 23 those portions of each party's briefs that are no longer at issue.

24 ³ Plaintiff does not reference Mr. Ende in his opposition.

25 ⁴ "We accept as true all well-pleaded allegations of material fact, and construe them in
 26 the light most favorable to the non-moving party." Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d
 992, 998 (9th Cir. 2010).

(footnote added) (quoting Twombly, 550 U.S. at 570). This standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. It “must contain sufficient allegations of underlying facts” to “plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” Starr v. Baca, 652 F.3d 1202, 1215–16 (9th Cir. 2011). Thus, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Iqbal, 556 U.S. at 678 (citation omitted). A plaintiff must plead sufficient “factual content [to] allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

Id.

As to Defendant Ende, Plaintiff has failed to meet this standard. The totality of Plaintiff’s factual allegations about Mr. Ende are that Plaintiff spoke with him in February 2008 about the substance of what would become the 2010 charges and that, after they spoke, “Mr. Ende seemed satisfied and no Bar charges were brought.” Amended Complaint (Dkt. # 43) at 7, 21. Obviously, these allegations do not permit the Court to the court to draw any inference, let alone a reasonable one, that Mr. Ende has any liability for the misconduct Plaintiff alleges occurred in 2010. See generally id. (alleging misconduct on the part of Ms. Eide and Ms. Hammel in bringing and maintaining disciplinary proceedings against Plaintiff in 2010). The Court therefore DISMISSES Plaintiff’s claims against him. See Fed. R. Civ. P. 12(b)(6).

22 2. Ms. Linda Eide

23 The Court turns next to the viability of Plaintiff’s claims against Ms. Eide. It
 24 finds at the outset that Plaintiff has alleged sufficient facts to state a plausible claim in
 25

1 the absence of immunity. See Dkt. # 43 at 8–21. Accordingly, the Court must consider
 2 her contention that she is absolutely immune from Plaintiff’s claims as a quasi-judicial
 3 officer. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (“Like other forms of official
 4 immunity, judicial immunity is an immunity from suit, not just from ultimate assessment
 5 of damages.”).

6 The Court starts with the facts. According to Plaintiff, Ms. Eide’s liability stems
 7 from her actions as a “Prosecuting attorney for the Bar.” E.g., Dkt. # 8 at 9. As he
 8 alleges, “Defendant Linda Eide filed a Disciplinary Complaint against” him in
 9 November 2010, id. at 8, and thereafter “concealed Grundstein[’s] exculpatory evidence
 10 and exhibits during trial and after,” “instructed witness attorney Ronald Meltzer to
 11 falsify evidence and testify falsely with respect to the state of the law pertinent to
 12 subpoenas and Grundstein[’s] conduct,” id. at 14, and illegally amended the “Formal
 13 Complaint” against him, id. at 19–20; id. at 10–11, among other things.

14 The difficulty for Plaintiff is the law. It is a black-letter principle that “[a]
 15 prosecuting attorney, as a quasi-judicial officer, enjoys immunity from suit under the
 16 Civil Rights Act insofar as his prosecuting functions are concerned.” Clark v. State of
 17 Wash., 366 F.2d 678, 681 (9th Cir. 1966). And the Ninth Circuit has repeatedly held
 18 that “Bar Court judges and prosecutors,” no less than ordinary judges and prosecutors,
 19 are subject to the same protection, i.e., they “are immune from damages.” Hirsh v.
 20 Justices of Sup. Ct. of State of Cal., 67 F.3d 708, 715 (9th Cir. 1995) (per curiam) (“The
 21 Bar Court judges and prosecutors have quasi-judicial immunity from monetary
 22 damages.”); accord Clark, 366 F.2d at 681 (“[T]he key to the immunity previously held
 23 to be protective to the prosecuting attorney is that the acts, alleged to have been
 24 wrongful, were committed by the office in the performance of an integral part of the

1 judicial process.’ As an arm of the Washington Supreme Court in connection with
 2 disciplinary proceedings, the Bar Association is an ‘integral part of the judicial process’
 3 and is therefore entitled to the same immunity which is afforded to prosecuting attorneys
 4 in that state.” (citation omitted)).⁵

5 To overcome this bar, Plaintiff invokes an exception. He contends that Ms. Eide
 6 cannot claim the benefit of absolute immunity because she acted as “complaining
 7 witness,” not a prosecutor. See Kalina v. Fletcher, 522 U.S. 118, 129 (1997). The Court
 8 disagrees. While it is true that a prosecutor is not absolutely immune from liability for
 9 acts performed “as a complaining witness rather than a lawyer,” id., Plaintiff has not
 10 identified any actions taken by Ms. Eide that are not squarely protected. For example,
 11 the Supreme Court has held that absolute prosecutorial immunity precludes a claim that a
 12 prosecutor “‘with intent, and on other occasions with negligence’ allowed [a witness] to
 13 give false testimony.” Imbler v. Pachtman, 424 U.S. 409, 416, 430–31 (1976) (“We hold
 14 only that in initiating a prosecution and in presenting the State’s case, the prosecutor is
 15 immune from a civil suit for damages under § 1983.” (emphasis added)). The same is
 16 true of “acts undertaken by a prosecutor in preparing for the initiation of judicial
 17 proceedings or for trial, and which occur in the course of his role as an advocate for the
 18 State,” including the preparation and filing of formal charging documents. Id. at 126,
 19 128–29 (“These cases make it quite clear that petitioner’s activities in connection with

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 21 ⁵ The circumstances of this case are distinct from those in Miller v. Wash. State Bar
 22 Ass’n, wherein a Bar disciplinary committee was denied immunity for actions performed in an
 23 administrative capacity without any possibility for review. 679 F.2d 1313, 1315–16 (9th Cir.
 24 1982). Here, unlike in Miller, Defendants are being sued for their quasi-judicial actions. And
 25 because “hearings are adversarial, errors are correctable on appeal, the judges make factual
 26 findings and perform other adjudicatory functions, and Bar Court decisions are controversial
 enough to stimulate harassing damage actions against the adjudicators,” they may assert
 immunity. Hirsh, 67 F.3d at 715 (citing Butz v. Economou, 438 U.S. 478, 511–17 (1978)).

1 the preparation and filing of two of the three charging documents—the information and
2 the motion for an arrest warrant—are protected by absolute immunity.”).

3 In short, contrary to Plaintiff’s assertion, the mere fact that Ms. Eide filed the
4 formal complaint against him does not render her a complaining witness. Id. at 129.
5 Because Plaintiff’s claims do not stem from any allegation that Ms. Eide personally
6 attested to the truth of any assertions or evidence contained in the formal complaint
7 against him, she retains her absolute immunity. Id. (“Indeed, except for her act in
8 personally attesting to the truth of the averments in the certification, it seems equally
9 clear that the preparation and filing of the [arrest warrant] was part of the advocate’s
10 function as well.”). The Court thus DISMISSES his claims against her.

11 **3. Ms. Lisa Hammel**

12 The Court next considers Plaintiff’s claims against Ms. Hammel. For the reasons
13 discussed, it turns directly to the issue of immunity.

14 As with Ms. Eide, each of Plaintiff’s claims against Ms. Hammel stem from her
15 role in the disciplinary proceedings against him. As he alleges, “Hearing Officer
16 Hammel accommodated Bar Prosecutor Eide by consistently hiding exculpatory
17 evidence favorable to Grundstein, refusing to recuse herself on the basis of bias, refusing
18 to rule on jurisdictional issues which would dismiss Bar’s case prior to hearing and by
19 allowing Bar to amend it’s complaint 8 times at hearing and change it’s requested
20 sanction from ‘probation’ to ‘disbarment’, [sic] without notice,” among other things.
21 Dkt. # 8 at 14 (alleging also that “Hearing Officer Hammel accommodated Bar
22 Prosecutor Eide by finding that a 4th degree misdemeanor statute (ORC 549.04(c) was a
23 felony and finding that the record of this misdemeanor was altered to hide it’s [sic]

1 misdemeanor character[]]”).⁶ Accordingly, Ms. Hammel is absolutely immune from suit
 2 on account of these actions, Hirsh, 67 F.3d at 715, unless either of two limited
 3 circumstances apply: “First, a judge is not immune from liability for nonjudicial actions,
 4 i.e., actions not taken in the judge’s judicial capacity.” Mireles, 502 U.S. at 11 (citations
 5 omitted). “Second, a judge is not immune for actions, though judicial in nature, taken in
 6 the complete absence of all jurisdiction.” Id. at 12 (citations omitted).

7 The Court has no difficulty finding the first exception unmet. As explained by the
 8 Supreme Court, “whether an act by a judge is a ‘judicial’ one relate[s] to the nature of
 9 the act itself, i.e., whether it is a function normally performed by a judge, and to the
 10 expectations of the parties, i.e., whether they dealt with the judge in his judicial
 11 capacity.” Id. at 12 (some internal quotation marks omitted) (alteration in original)
 12 (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)). And, plainly, each of the acts
 13 about which Plaintiff complains—her evidentiary and other rulings—is a “function
 14 normally performed by a judge.” See id. (quoting Stump, 435 U.S. at 362). As a result,
 15 it simply does not matter for purposes of immunity that Plaintiff believes she acted
 16 erroneously, id. at 12–13 (“If judicial immunity means anything, it means that a judge
 17 ‘will not be deprived of immunity because the action he took was in error . . . or was in
 18 excess of his authority.’” (citation omitted)), or even in bad faith, id. at 11. Simply put,
 19

20 ⁶ The Court has previously noted that the documentary record refutes many of
 21 Plaintiff’s allegations. See Dkt. # 73 at 7 n.5. For example, in contrast to Plaintiff’s allegation
 22 that Ms Hammel “found Grundstein changed a felony charge to a misdemeanor in order to
 23 purchase a gun sometime in the past (2002, 2003?),” Dkt. # 8 at 11; see id. at 14, her findings
 24 plainly state: ‘Respondent admitted that he altered [the court’s order] to reflect that he was only
 25 charged with a fourth degree misdemeanor as opposed to a first degree misdemeanor,’ Dkt. #
 26 20-1 at 5 (emphasis added). The Court is not required to accept such allegations as true.
Daniels-Hall, 629 F.3d at 998 (“We are not, however, required to accept as true allegations that
 contradict exhibits attached to the Complaint or matters properly subject to judicial notice . . .
 .”).

1 “immunity applies even when the judge is accused of acting maliciously and corruptly.”

2 Pierson v. Ray, 386 U.S. 547, 554 (1967); accord Mireles, 502 U.S. at 11.

3 The second exception is similarly unmet. The crux of Plaintiff’s position is that
 4 the disciplinary proceedings against him were defective because Ms. Hammel acted
 5 “without territorial, in personam or subject matter jurisdiction.” Dkt. # 8 at 6–7. But as
 6 the Ninth Circuit has explained, “In determining judicial immunity, we have
 7 distinguished between acts ‘in excess of jurisdiction’ and acts ‘in the clear absence of
 8 jurisdiction’ by looking to the subject-matter jurisdiction of the judge: ‘[a] clear absence
 9 of all jurisdiction means a clear lack of all subject matter jurisdiction.’” Miller v. Davis,
 10 521 F.3d 1142, 1147 (9th Cir. 2008) (emphasis added). And the Court finds that
 11 Plaintiff has wholly failed to allege any facts that plausibly support his position that Ms.
 12 Hammel lacked subject matter jurisdiction over his disciplinary hearings. To the
 13 contrary, it is indisputable that the Washington Supreme Court “bears the ultimate
 14 responsibility for lawyer discipline in Washington.” In re Disciplinary Proceeding
 15 Against Scannell, 169 Wn.2d 723, 737 (2010); accord Washington Rule for Enforcement
 16 of Lawyer Conduct (“ELC”) 2.1 (“The Washington Supreme Court has exclusive
 17 responsibility in the state to administer the lawyer discipline and disability system and
 18 has inherent power to maintain appropriate standards of professional conduct and to
 19 dispose of individual cases of lawyer discipline and disability.”). And, as a hearing
 20 officer, Ms. Hammel acted under that court’s authority. Compare ELC 2.1 (“Persons
 21 carrying out the functions set forth in these rules act under the Supreme Court’s
 22 authority.”), with ELC 2.5(a) (“A hearing officer or panel to whom a case has been
 23 assigned for hearing conducts the hearing and performs other functions as provided
 24 under these rules.”). Plaintiff’s assertions of procedural and other improprieties are thus,
 25 again, simply immaterial to the question of Ms. Hammel’s immunity. Stump, 435 U.S.

1 at 362 (rejecting the assertion that a judge acted without jurisdiction “because of his
 2 failure to comply with elementary principles of procedural due process”).

3 In sum then, the Court finds that Ms. Hammel is absolutely immune from
 4 Plaintiff’s claims. Her acts were judicial and within her jurisdiction as a hearing officer.

5 **4. The Washington State Bar Association and Williams & Williams P.C.**

6 Finally, the Court considers the liability of the WSBA and Williams & Williams
 7 P.C.

8 Plaintiff’s claims against the WSBA directly are precluded by the Eleventh
 9 Amendment. See Hirsh, 67 F.3d at 715 (“The Eleventh Amendment’s grant of sovereign
 10 immunity bars monetary relief from state agencies such as California’s Bar Association
 11 and Bar Court.”).⁷ And the Court finds that Plaintiff’s claims against Williams &
 12 Williams P.C., which are premised entirely on a theory of vicarious liability for the acts
 13 of Ms. Hammel, are foreclosed by the fact that Ms. Hammel is absolutely immune from
 14 his claims.

15 **B. Request for a Pre-Filing Order**

16 Having concluded that each of the remaining Defendants are immune from
 17 Plaintiff’s claims against them, the Court considers the request for a pre-filing order.

18 “The All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent
 19 power to enter pre-filing orders against vexatious litigants.” Molski v. Evergreen
 20 Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007). And while “[c]ourts should not
 21 enter pre-filing orders with undue haste because such sanctions can tread on a litigant’s
 22 due process right of access to the courts,” id., “[f]lagrant abuse of the judicial process

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 25 ⁷ Were Plaintiff to sue any of the individual Defendants in his or her official capacity,
 that claim would also be foreclosed by the Eleventh Amendment. Hirsh, 67 F.3d at 715.

1 cannot be tolerated because it enables one person to preempt the use of judicial time that
 2 properly could be used to consider the meritorious claims of other litigants,”” id.
 3 (quoting De Long v. Hennessey, 912 F.2d 1144, 1146 (9th Cir. 1990)).

4 In determining whether an order is appropriate, district courts must consider four
 5 factors: “First, the litigant must be given notice and a chance to be heard before the
 6 order is entered.” Id. “Second, the district court must compile ‘an adequate record for
 7 review.’” Id. (quoting De Long, 912 F.2d at 1147). “Third, the district court must make
 8 substantive findings about the frivolous or harassing nature of the plaintiff’s litigation.”
 9 Id. “Finally, the vexatious litigant order ‘must be narrowly tailored to closely fit the
 10 specific vice encountered.’” Id. (quoting De Long, 912 F.2d at 1147).

11 In this case, the Court does not need to look any further than the third factor to
 12 conclude that a pre-filing order is not yet warranted. “[P]re-filing orders are an extreme
 13 remedy that should rarely be used.” Id. And though Plaintiff has certainly exhibited a
 14 pattern of vexatious tactics in other matters—both related and unrelated to the subject
 15 matter of this case—this is only the second federal claim Plaintiff has filed in this matter
 16 and the first to be dismissed on the merits with prejudice. Accordingly, while Plaintiff’s
 17 actions come extremely close to the line between “inexperience[d],” yet earnest attempts
 18 to correct a perceived injustice, see Dkt. # 65 at 17, and patently frivolous and harassing
 19 conduct, the Court is willing to give him the benefit of the doubt at this time.

20 **III. CONCLUSION**

21 For all of the foregoing reasons, the Court GRANTS Defendants’ motion IN
 22 PART. It DISMISSES Plaintiff’s remaining claims against the WSBA Defendants
 23 WITH PREJUDICE but DENIES their request for a pre-filing order. The Clerk of Court
 24 is directed to enter judgment against Plaintiff in favor of each of the Defendants.

1 DATED this 7th day of September, 2012.

2 Robert S. Lasnik

3 Robert S. Lasnik
4 United States District Judge